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FILED IN THE  
UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

SEP 03 2019  
at 3 o'clock and 55 min. P.M.  
SUE BEITIA, CLERK

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA, ) CR. NO. 19-00115-04 RT  
Plaintiff, )  
vs. ) MEMORANDUM OF PLEA  
RUSSELL YAMANOHA, ) AGREEMENT  
Defendant. )  
 ) DATE: September 3, 2019  
 ) TIME: 1:30 P.M.  
 ) JUDGE: Hon. Wes Reber Porter  
 ) U.S. Magistrate Judge  
 )

## **MEMORANDUM OF PLEA AGREEMENT**

Pursuant to Rule 11 of the Federal Rules of Criminal Procedure, the  
UNITED STATES OF AMERICA, by its attorney, the United States Attorney for

the District of Hawaii, and the defendant, RUSSELL YAMANOHA, and his attorney, Michael Healy, Esq., have agreed upon the following:

**THE CHARGES**

1. The defendant acknowledges that he has been charged in the Information with violating Title 18, United States Code, Section 371.
2. The defendant has read the charge against him contained in the Information, and that charge has been fully explained to him by his attorney.
3. The defendant fully understands the nature and elements of the crime with which he has been charged.

**THE AGREEMENT**

4. The defendant will enter a voluntary plea of guilty to the Information, which charges him with violating Title 18, United States Code, Section 371 by conspiring to cause a false entry in a record required to be maintained by a labor union, a violation of Title 29, United States Code, Section 439(c). In return, the government agrees not to file any additional charges against the defendant arising out of his participation in the falsification of an IBEW Local 1260 vote to increase dues, based on evidence now known by the government. If the government should obtain new evidence not known as of the date of this Agreement, it will have the discretion to seek and bring additional charges against the defendant.

5. The defendant agrees that this Memorandum of Plea Agreement shall be filed and become part of the record in this case.

6. The defendant enters this plea because he is in fact guilty of conspiring to cause a false entry in a record required to be maintained by a labor union, as charged in the Information, and he agrees that this plea is voluntary and not the result of force or threats.

### **PENALTIES**

7. The defendant understands that the penalties for the offense to which he is pleading guilty include:

- a. A term of imprisonment up to 1 year and a fine of up to \$10,000, plus a term of supervised release up to 1 year.
- b. The defendant understands that, in addition to the foregoing penalties, the Court may award restitution under Title 18 United States Code, Section 3663 to all persons and entities that suffered a pecuniary loss as a result of the criminal conduct to which he is pleading guilty. The defendant understands that the Court will determine the amounts of restitution to be ordered, as well as the persons and entities entitled to such restitution, with the assistance of the United States Probation Office.

c. In addition, the Court must impose a \$25 special assessment as to each count to which the defendant is pleading guilty. The defendant agrees to pay \$25 for each count to which he is pleading guilty to the District Court's Clerk's Office, to be credited to said special assessments, before the commencement of any portion of sentencing. The defendant acknowledges that failure to make such full advance payment in a form and manner acceptable to the prosecution will allow, though not require, the prosecution to withdraw from this Agreement at its option.

#### **FACTUAL STIPULATIONS**

8. The defendant admits the following facts and agrees that they are not a detailed recitation, but merely an outline of what happened in relation to the charge to which the defendant is pleading guilty:

a. The defendant was a member and employee of the International Brotherhood of Electrical Workers, Local 1260 ("Local 1260"), a labor organization engaged in an industry affecting commerce within the meaning of Title 29, United States Code, Sections 402(i) and 402(j). Local 1260 was divided into nine units located in the State of Hawaii and the Territory of Guam.

b. In January of 2015, Michael Brittain, Daniel Rose, Lee Ann Miyamura, Russell Yamanoha, and others agreed to falsify the results of the IBEW Local 1260 vote on a resolution raising member dues.

c. On or about January 26, 2015, Brittain, Rose, Miyamura, Yamanoha, and others flew from Honolulu to Guam, where Unit 9 of Local 1260 was holding a meeting to vote on the dues increase resolution.

d. The dues increase required a majority vote in favor by all Local 1260 members via secret ballot elections at each of the nine units. By January 2015, all other Local 1260 units had already voted on the dues increase resolution, and it appeared the measure would not pass. Unit 9 in Guam was the last unit to vote.

e. On the morning of January 29, 2015, Brittain, Rose, Miyamura, Yamanoha, and others met in a conference room at the Guam Hilton and filled out fake ballots voting “yes” on the dues increase. They then traveled to the Local 1260 Unit 9 membership meeting.

f. Brittain, Rose, Miyamura, Yamanoha and others then worked together to switch out the real Unit 9 ballots for the fake ballots, thereby faking the results of the election. Miyamura and Brittain helped check members in at the meeting. Rose hid outside in a vehicle. After the voting ended, Brittain went out

to where Rose was hiding and gave Rose an envelope containing the real ballots cast by Unit 9 members. Rose then gave Brittain an envelope full of the fake ballots that they had prepared earlier that day at the Guam Hilton.

g. Rose destroyed the actual ballots cast by Unit 9 members. The fraudulent ballots were counted and the official tally sheet from the election stated that the dues increase had passed. In fact, and as Brittain, Rose, Miyamura, and Yamanoha knew, the results on the election tally sheet were based upon the fraudulent ballots created by them for the purpose of rigging the election results so that the dues increase passed.

h. The unit and executive board minutes and the Local 1260 Bylaws thereafter reported the dues increase as if it were the result of a genuine election by union members, when in fact and as Brittain, Rose, Miyamura, and Yamanoha knew, the dues increase had not actually been authorized by the union members because the true Unit 9 ballots had been destroyed, and Brittain, Rose, Miyamura, Yamanoha, and others had falsified the results of the election.

9. Pursuant to CrimLR 32.1(a) of the Local Rules of the United States District Court for the District of Hawaii, the parties agree that the charge to which the defendant is pleading guilty adequately reflects the seriousness of the actual

offense behavior and that accepting this Agreement will not undermine the statutory purposes of sentencing.

**SENTENCING STIPULATIONS**

10. Pursuant to CrimLR 32.1(b) of the Local Rules of the United States District Court for the District of Hawaii and Section 6B1.4 of the Sentencing Guidelines, the parties stipulate to the following for the purpose of the sentencing of the defendant in connection with this matter:

a. As of the date of this agreement, it is expected that defendant will enter a plea of guilty to the Information, will truthfully admit his involvement in the offense and related conduct, and will not engage in conduct that is inconsistent with such acceptance of responsibility. If all of these events occur, and defendant's acceptance of responsibility continues through the date of sentencing, a downward adjustment of 2 levels for acceptance of responsibility will be appropriate. See U.S.S.G. § 3E1.1(a) and Application Note 3.

b. The United States Attorney agrees that the defendant's agreement herein to enter into a guilty plea constitutes notice of intent to plead guilty in a timely manner, so as to permit the government to avoid preparing for trial as to the defendant. Accordingly, the United States Attorney anticipates moving in the Government's Sentencing Statement for a one-level reduction in

sentencing offense level pursuant to Guideline § 3E1.1(b)(2), if the defendant is otherwise eligible. The defendant understands that notwithstanding its present intentions, and still within the Agreement, the prosecution reserves the rights (1) to argue to the contrary in the event of receipt of new information relating to those issues, and (2) to call and examine witnesses on those issues in the event that either the United States Probation Office finds to the contrary of the prosecution's intentions or the Court requests that evidence be presented on those issues.

11. The parties agree that notwithstanding the parties' Agreement herein, the Court is not bound by any stipulation entered into by the parties but may, with the aid of the presentence report, determine the facts relevant to sentencing. The parties understand that the Court's rejection of any stipulation between the parties does not constitute a refusal to accept this Agreement since the Court is expressly not bound by stipulations between the parties.

12. The parties represent that as of the date of this agreement there are no material facts in dispute.

#### **APPEAL/COLLATERAL REVIEW**

13. The defendant is aware that he has the right to appeal his conviction and the sentence imposed. The defendant knowingly waives the right to appeal, except as indicated in subparagraph "b" below, his conviction and any sentence

within the Guidelines range as determined by the Court at the time of sentencing, and any restitution order imposed, or the manner in which the sentence or restitution order was determined, on any ground whatsoever, in exchange for the concessions made by the prosecution in this Agreement. The defendant understands that this waiver includes the right to assert any and all legally waivable claims.

a. The defendant also waives the right to challenge his conviction or sentence or the manner in which it was determined in any collateral attack, including, but not limited to, a motion brought under Title 28, United States Code, Section 2255, except that the defendant may make such a challenge (1) as indicated in subparagraph "b" below, or (2) based on a claim of ineffective assistance of counsel.

b. If the Court imposes a sentence greater than specified in the guideline range determined by the Court to be applicable to the defendant, the defendant retains the right to appeal the portion of his sentence greater than specified in that guideline range and the manner in which that portion was determined and to challenge that portion of his sentence in a collateral attack.

c. The prosecution retains its right to appeal the sentence and the manner in which it was determined on any of the grounds stated in Title 18, United States Code, Section 3742(b).

**FINANCIAL DISCLOSURE**

14. In connection with the collection of restitution or other financial obligations that may be imposed upon him, the defendant agrees as follows:

a. The defendant agrees to fully disclose all assets in which he has any interest or over which the defendant exercises control, directly or indirectly, including those held by a spouse, nominee or third party. The defendant agrees to truthfully complete the financial statement form provided to the defendant in connection with this Agreement by the earlier of 45 days from the defendant's signature on this Agreement or the date of the defendant's entry of a guilty plea, sign it under penalty of perjury, and provide it to both the United States Attorney's Office and the United States Probation Office. The defendant agrees to provide updates with any material changes in circumstances, as described in Title 18, United States Code, Section 3664(k), which occur prior to sentencing, within seven days of the event giving rise to the changed circumstances. The defendant's failure to timely and accurately complete and sign the financial statement, and any

update thereto, may, in addition to any other penalty or remedy, constitute the defendant's failure to accept responsibility under U.S.S.G § 3E1.1.

b. The defendant expressly authorizes the United States Attorney's Office to obtain a credit report on him. The defendant also authorizes the United States Attorney's Office to inspect and copy all financial documents and information held by the United States Probation Office.

c. Prior to sentencing, the defendant agrees to notify the Financial Litigation Unit of the U.S. Attorney's Office before making any transfer of an interest in property with a value exceeding \$1,000 owned directly or indirectly, individually or jointly, by the defendant, including any interest held or owned under any name, including trusts, partnerships and corporations.

### **IMPOSITION OF SENTENCE**

15. The defendant understands that the District Court in imposing sentence will consider the provisions of the Sentencing Guidelines. The defendant agrees that there is no promise or guarantee of the applicability or non-applicability of any Guideline or any portion thereof, notwithstanding any representations or predictions from any source.

16. The defendant understands that this Agreement will not be accepted or rejected by the Court until there has been an opportunity by the Court to consider a

presentence report, unless the Court decides that a presentence report is unnecessary. The defendant understands that the Court will not accept an agreement unless the Court determines that the remaining charge adequately reflects the seriousness of the actual offense behavior and accepting the Agreement will not undermine the statutory purposes of sentencing.

### **WAIVER OF TRIAL RIGHTS**

17. The defendant understands that by pleading guilty he surrenders certain rights, including the following:

a. If the defendant persisted in a plea of not guilty to the charges against him, then he would have the right to a public and speedy trial. The trial could be either a jury trial or a trial by a judge sitting without a jury. The defendant has a right to a jury trial. However, in order that the trial be conducted by the judge sitting without a jury, the defendant, the prosecution, and the judge all must agree that the trial be conducted by the judge without a jury.

b. If the trial is a jury trial, the jury would be composed of twelve laypersons selected at random. The defendant and his attorney would have a say in who the jurors would be by removing prospective jurors for cause where actual bias or other disqualification is shown, or without cause by exercising peremptory challenges. The jury would have to agree unanimously before it could return a

verdict of either guilty or not guilty. The jury would be instructed that the defendant is presumed innocent, and that it could not convict him unless, after hearing all the evidence, it was persuaded of his guilt beyond a reasonable doubt.

c. If the trial is held by a judge without a jury, the judge would find the facts and determine, after hearing all the evidence, whether or not he or she was persuaded of the defendant's guilt beyond a reasonable doubt.

d. At a trial, whether by a jury or a judge, the prosecution would be required to present its witnesses and other evidence against the defendant. The defendant would be able to confront those prosecution witnesses and his attorney would be able to cross-examine them. In turn, the defendant could present witnesses and other evidence on his own behalf. If the witnesses for the defendant would not appear voluntarily, the defendant could require their attendance through the subpoena power of the Court.

e. At a trial, the defendant would have a privilege against self-incrimination so that he could decline to testify, and no inference of guilt could be drawn from his refusal to testify.

18. The defendant understands that by pleading guilty, he is waiving all of the rights set forth in the preceding paragraph. The defendant's attorney has explained those rights to him, and the consequences of the waiver of those rights.

### **USE OF PLEA STATEMENTS**

19. If, after signing this Agreement, the defendant decides not to plead guilty as provided herein, or if the defendant pleads guilty but subsequently makes a motion before the Court to withdraw his guilty plea and the Court grants that motion, the defendant agrees that any admission of guilt that he makes by signing this Agreement or that he makes while pleading guilty as set forth in this Agreement may be used against him in a subsequent trial if the defendant later proceeds to trial. The defendant voluntarily, knowingly, and intelligently waives any protection afforded by Rule 11(f) of the Federal Rules of Criminal Procedure and Rule 410 of the Federal Rules of Evidence regarding the use of statements made in this Agreement or during the course of pleading guilty when the guilty plea is later withdrawn. The only exception to this paragraph is where the defendant fully complies with this Agreement but the Court nonetheless rejects it. Under those circumstances, the United States may not use those statements of the defendant for any purpose.

20. The defendant understands that the prosecution will apprise the Court and the United States Probation Office of the nature, scope and extent of the defendant's conduct regarding the charges against him, related matters, and any matters in aggravation or mitigation relevant to the issues involved in sentencing.

**COOPERATION**

21. The defendant agrees that he will fully cooperate with the United States.

a. The defendant agrees to testify truthfully at any and all trials, hearings, or any other proceedings at which the prosecution requests him to testify, including, but not limited to, any grand jury proceedings, trial proceedings involving co-defendants and others charged later in the investigation, sentencing hearings, and related civil proceedings.

b. The defendant agrees to be available to speak with law enforcement officials and representatives of the United States Attorney's Office at any time and to give truthful and complete answers at such meetings, but he understands he may have his counsel present at those conversations, if he so desires.

c. The defendant agrees he will not assert any privilege to refuse to testify at any grand jury, trial, or other proceeding, involving or related to the crimes charged in this Information or any subsequent charges related to this investigation, at which the prosecution requests him to testify.

d. The defendant agrees that his sentencing date may be delayed based on the government's need for the defendant's continued cooperation, and

agrees not to object to any continuances of the defendant's sentencing date sought by the United States.

e. Pursuant to Section 1B1.8(a) of the Sentencing Guidelines, the prosecution agrees that self-incriminating information provided pursuant to this Agreement to cooperate will not be used in determining the applicable guideline range, except as may be provided in this Agreement and under Section 1B1.8(b) of the Sentencing Guidelines.

22. In the event that the defendant does not breach any of the terms of this Agreement but the Court nonetheless refuses to accept the Agreement after the defendant has made statements to law enforcement authorities or representatives of the United States Attorney's Office pursuant to this Agreement, the prosecution agrees not to use said statements in its case-in-chief in the trial of the defendant in this matter. The defendant understands that this does not bar the use of information and evidence derived from said statements or prohibit the use of the statements by the prosecution in cross-examination or rebuttal.

23. Pursuant to Guidelines § 5K1.1 and Rule 35(b) of the Federal Rules of Criminal Procedure, the prosecution may move the Court to depart from the Guidelines on the ground that the defendant has provided substantial assistance to

authorities in the investigation or prosecution of another person who has

committed an offense. The defendant understands that:

a. The decision as to whether to make such a request or motion is entirely up to the prosecution.

b. This Agreement does not require the prosecution to make such a request or motion.

c. This Agreement confers neither any right upon the defendant to have the prosecution make such a request or motion, nor any remedy to the defendant in the event the prosecution fails to make such a request or motion.

d. Even in the event that the prosecution makes such a request or motion, the Court may refuse to depart from the Guidelines or to impose a sentence below the minimum level established by statute.

24. The defendant and his attorney acknowledge that, apart from any written proffer agreements, if applicable, no threats, promises, agreements or conditions have been entered into by the parties other than those set forth in this Agreement, to induce the defendant to plead guilty. Apart from any written proffer agreements, if applicable, this Agreement supersedes all prior promises, agreements or conditions between the parties.

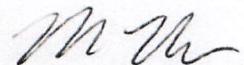
25. To become effective, this Agreement must be signed by all signatories listed below.

26. Should the Court refuse to accept this Agreement, it is null and void and neither party shall be bound thereto.

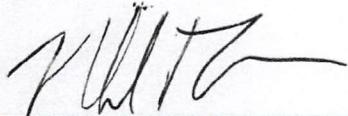
DATED: Honolulu, Hawaii, September 3, 2019.

AGREED:

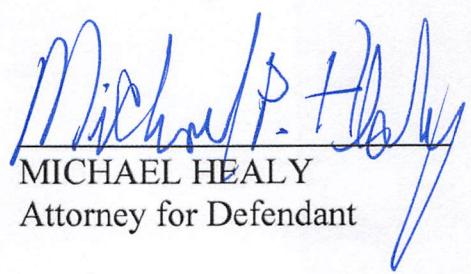
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